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Eradication of poverty and other development issues

Legal empowerment of the poor and eradication of poverty

Report of the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 63/142 on the legal empowerment of the poor and eradication of poverty. The report summarizes the emerging approach to legal empowerment of the poor; highlights the operational scope and focus of legal empowerment of the poor; summarizes national and regional experiences and the role of various organizations of the United Nations system in fostering empowerment of the poor; and addresses challenges and lessons learned.

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Introduction

1. In its resolution 63/142, the General Assembly took note of the final report of the Commission on Legal Empowerment of the Poor, entitled *Making the Law Work for Everyone*,[1] and stressed the importance of sharing best practices in legal empowerment of the poor. It also requested the Secretary-General to submit to it a report on the legal empowerment of the poor, taking into account national experiences in this regard.

2. In many developing countries, laws, institutions and policies governing economic and social interactions do not afford equal opportunity and protection to a large segment of the population, who are mostly poor, minorities, women and other disadvantaged groups. Instead of fostering inclusive and equitable growth, some laws and institutions tend to impose barriers and biases against the poor. Even where there are laws that protect and uphold the rights of the poor, they are often too ambiguous, cumbersome and costly for them to access. In many developing countries, informal norms, practices and institutions govern the everyday life of the poor. The poor may have to worry about the state of the slum in which they live or about the bribes they must pay for inadequate public services, which they are entitled to receive free of charge. In a system that works against them, the poor survive by mixing customary practice with ingenuity, creating informal structures that can at times be more effective than their formal counterparts. Yet, in many places, customary laws and practices also discriminate against women and juveniles, who face multiple and intersecting grounds of exclusion.

3. Legal empowerment of the poor can be understood as the process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors. It is a means to an end but also an end in itself. Strengthening the rule of law is an important contributor to the legal empowerment of the poor. While it is not a substitute for other important development interventions, legal empowerment of the poor can be a necessary condition to create an enabling environment for providing sustainable livelihoods and eradicating poverty.

4. Legal empowerment is rooted in a human rights-based approach to development, which recognizes that poverty results from disempowerment, exclusion and discrimination. Thus, legal empowerment fosters development through empowering and strengthening the voices of individuals and communities, starting at the grass roots and from within. It also recognizes that every individual must have access to justice, including due process and remedies and that action must be taken to eliminate discrimination. Legal empowerment promotes a participatory approach to development and recognizes the importance of engaging civil society and community-based organizations to ensure that the poor and the marginalized have identity and voice. Such an approach can strengthen democratic governance and accountability, which, in turn, can play a critical role in the achievement of the internationally agreed development goals, including the Millennium Development Goals.

5. Legal empowerment of the poor seeks to establish the rule of law and ensure equal and equitable access to justice and tackle the root causes of exclusion,

[1] http://www.undp.org/legalempowerment/report/Making_the_Law_Work_for_Everyone.pdf.

vulnerability and poverty. Security of livelihoods, of shelter, of tenure and of contracts can enable and empower the poor to defend themselves against possible violation of their rights. In that respect, legal empowerment is both preventive and curative. It goes beyond the provision of legal remedies and leads to better economic opportunities for the poor.

6. Focusing on livelihood security, legal empowerment can effectively deliver both the "freedom from want" and the "freedom from fear". When communities and societies respect the law and traditions, it can ensure protection for all and can prevent and protect against abuse of authority, bias and discrimination, which are often the root causes of social unrest, violence and conflict. A fair and effective legal system is also a prerequisite for a well-functioning, participatory democracy where the poor are empowered and legal measures are available for the peaceful resolution of conflict.

I. The international human rights framework and legal empowerment of the poor

7. Poverty is among the gravest human rights challenges in the world. It embodies a range of interrelated and mutually reinforcing deprivations, and is associated with stigma, discrimination, insecurity and social exclusion. Poverty is not simply the lack of material goods and opportunities such as employment, ownership of productive assets and savings. It is also the lack of intangible assets and social goods, such as legal identity, good health, physical integrity, freedom from fear and violence, organizational capacity, the ability to exert political influence, and the ability to claim rights and live in respect and dignity. The poor are not a homogeneous group; vulnerabilities and challenges vary among persons living in poverty. A human rights approach to development is fundamentally concerned with empowerment, believing that poverty results from disempowerment and multiple exclusions.

8. A characteristic of virtually all communities living in poverty is that they do not have access, on an equal footing, to government institutions and services that protect and promote human rights — where such institutions exist in the first place. Often, they are also unable to adequately voice their needs, to seek redress against injustice, participate in public life, and influence policies that ultimately will shape their lives. People excluded in this manner not only lack the protection and rights afforded by the law, but any resources they may have can neither be properly protected nor leveraged owing to such cumulative effects of exclusion and discrimination. Obstacles to obtaining justice undoubtedly reinforce poverty and exclusion. Poverty can thus be seen as both the cause and consequence of exclusion from the rule of law.

9. Legal empowerment can give poor people and communities the legal tools to proactively protect themselves from the effects of climate change, such as droughts, deforestation, desertification, sea-level rise and flooding. At the same time, legal empowerment can give poor people access to new climate financing opportunities such as the carbon markets. Secure land rights, for example, will be critical to ensuring that poor farming communities can attract carbon financing to rehabilitate forests, grasslands and agricultural land. Land rights for the poor and equitable access to land would produce a triple dividend: improving livelihood security,

stimulating economic development, and reducing concentrations of greenhouse gases. Legal empowerment of the poor could therefore contribute to sustainable poverty reduction and climate resilient development.

10. From a human rights perspective, legal empowerment is critical both as a development objective and as an outcome, whereby all individuals — as rights-holders — will possess capacities to claim and exercise their rights. Given that enjoyment of human rights involves the interaction of claims on entitlements and corresponding duties, a human rights perspective in development also aims to develop the capacity of State and non-State actors as duty-bearers to meet the obligations of the social contract.

11. This fundamental linkage between human rights and development, inherent in the Charter of the United Nations and reiterated by Member States in the 2000 Millennium Declaration, the 2005 World Summit Outcome and outcomes of other international conferences is at the core of the approach to the legal empowerment of the poor that is emerging within the international community.

12. The final report of the Commission on Legal Empowerment of the Poor[1] fully recognizes that the concept of legal empowerment is anchored in the basic principles of human rights articulated in the 1948 Universal Declaration of Human Rights and the subsequent universal and regional international human rights conventions, beginning with article 1 of the Universal Declaration, which states that "All human beings are born free and equal in dignity and rights." These international standards of human rights require that everyone's basic rights, assets and livelihoods be effectively upheld and protected by the law. The Declaration makes it clear that all human rights are indivisible and interrelated, and that equal importance should be attached to each and every right.

Human rights mechanisms to support empowerment of the poor

13. The international human rights framework offers a comprehensive basis for legal empowerment of the poor. The relevant international norms and standards that support legal empowerment of the poor are constantly being strengthened and elaborated. Both in the contexts of human rights treaty bodies and special procedures of the Human Rights Council as well as of the Social Forum of the Human Rights Council, important work on issues relevant to legal empowerment of the poor and eradication of poverty, including on the right of equal access to justice, has been carried out.

14. In his 2008 report to the Human Rights Council, the Special Rapporteur on the independence of judges and lawyers stressed the importance of free legal aid programmes, which is generally the only legal assistance accessible to large portions of the population and emphasized the need to support the work of non-governmental organizations and bar associations, and their initiatives to bring justice to traditionally neglected regions and social groups. The Special Rapporteur noted that there are "serious obstacles barring access to justice for the very poor", and recognized that "nothing mirrors the indivisibility and interdependence of human

rights better than extreme poverty, since anyone living in extreme poverty is adversely affected in every aspect of life".[2]

Legal empowerment of the poor, with special regard for women and children

15. Despite the global recognition of, and support for, the principle of equality, women and the girl child continue to face challenges to the full enjoyment of their human rights. Discrimination and inequalities in women's access to land, property, the labour market and inheritance persist, often resulting from statutory and customary property systems that disenfranchise women.

16. The link between women's empowerment and poverty eradication encompasses in particular the following aspects: (a) women's de jure equality and the elimination of discrimination against women, which covers the persistence of overtly discriminatory legal provisions in both statutory law and customary legal systems; (b) women's knowledge of their rights and capacity to claim them, including legal literacy; and (c) means of redress and access to justice and remedies, including international means of redress. These aspects are elaborated in the Convention on the Elimination of All Forms of Discrimination against Women and the Committee on the Elimination of Discrimination against Women.

17. The Convention (article 2) requires States parties to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, and requires States to ensure through law and other appropriate means, the practical realization of the principle of the equality of men and women (article 2 (a)). Pertinent to legal empowerment of the poor are the articles dealing with employment (article 11), economic and social life, including family benefits, bank loans, mortgages and other forms of financial credit (article 13), the situation of rural women including access to agricultural credit and loans, and equal treatment in land and agrarian reform as well as in land resettlement schemes (article 14); equality with men before the law, and identical legal capacity, including the conclusion of contracts and administration of property (article 15), and equality in marriage and family relations (article 16).

18. The Committee on the Elimination of Discrimination against Women recognizes the right to own, manage, enjoy and dispose of property as central to a woman's right to enjoy financial independence, which in many countries, is critical to women's ability to earn a living. In the view of the Committee on the Elimination of Discrimination against Women, any laws that grant men a greater share of property or inheritance severely limit a woman's ability to provide for herself or her dependants.[3]

19. The Beijing Platform for Action (para. 51) and the Outcome Document of the twenty-third special session of the General Assembly (para. 8), in 2000, also noted that women's poverty was directly related to the lack of access to economic resources, including credit, land ownership and inheritance. The Platform focuses on women's equal rights, the need for revision of laws and administrative practices to

[2] A/HRC/8/4, para. 26. The Special Rapporteur considered this issue in his former capacity as Special Rapporteur for the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1996/13).

[3] Committee on the Elimination of Discrimination against Women General Recommendation No. 21 on equality in marriage and family relations, paras. 26 and 35.

ensure women's equal rights and access to economic resources. To that end, the Platform (para. 58 (p) and 61) calls for free or low-cost legal services, including legal literacy, especially designed to reach women living in poverty.

20. The Division for the Advancement of Women in the United Nations Secretariat regularly highlights the role of women's legal empowerment in efforts to address poverty, including elimination of discriminatory laws, enhanced legal literacy of women and women's access to remedies, in its analytical work and its support for the normative and policy-making work of Member States. The Division for the Advancement of Women highlighted linkages between the legal empowerment of women and poverty eradication in a report on women in development. The report notes (A/62/187, para. 5) that women's vulnerability to poverty results from a number of factors, including: inequalities in access to productive resources; and unequal distribution of resources within the family, and stressed the need for women to enjoy equality in the labour market and access to and control over economic resources. The 2009 World Survey on the role of women in development will address women's control over economic resources and access to financial resources, including microfinance, within the broad framework of the economic empowerment of women.

21. The Division for the Advancement of Women also highlighted the impact that gender inequalities in customary law and legislation can have, for example, on the unequal division of responsibilities between women and men. Laws that do not grant women and men the same rights in marriage, family relations, divorce and access to property contribute to women's economic dependence on men and reduce their access to resources. The Division for the Advancement of Women also found that owing to their concentration in informal work, many women do not enjoy basic rights and are not eligible to access social security benefits — entitlements that help to define decent work.[4] The quality of women's employment influences the extent of their entitlements. Access to adequate pensions may be jeopardized because of lower wages and shorter work histories owing to interruptions related to caregiving.

22. As part of its continuing efforts to fulfil its special mandate for supporting the Convention on the Rights of the Child, the United Nations Children's Fund (UNICEF) has launched a Legislative Reform Initiative aimed at influencing the establishment of legal frameworks that promote gender equality and result in real and positive changes for children at the national level. Legal reform in relation to children's rights is essential as it can help establish entitlements that can contribute to reducing child poverty and economic discrimination against women, improving living conditions of children, protecting children from commercial exploitation, and enhancing the provision of effective social security and safety nets for the poor.

II. Legal empowerment of the poor: operational framework

23. Globally agreed human rights instruments and the ongoing work and recommendations of the human rights treaty bodies provide the normative basis of the legal empowerment of the poor as discussed in section I, as well as the foundations for elaborating a practical and operational framework for addressing vulnerabilities and legal empowerment of the poor. The Commission on Legal

[4] E/CN.6/2009/2, para. 36.

Empowerment of the Poor contributed to the elaboration of the framework by identifying three empowerment domains and related rights essential to the livelihoods of the poor: property rights, labour rights and rights to self-employment and business.[5] These rights are underpinned by access to justice as a component of the rule of law, the fundamental and enabling framework without which none of the rights can be realized. Four key conditions for legal empowerment of the poor are identity, information, voice and organization.

Access to justice

24. The legal system can play an important role in supporting poverty eradication by giving poor people access to the appropriate mix of rights and remedies. However, laws that discriminate against, or ignore, the rights and livelihoods of the poor can pose serious obstacles to the eradication of poverty. In such contexts, law and justice sector reforms can provide the foundation for protection and incentives to enable poor people to realize the full value of their human and physical capital. Yet, reforming the law on paper is often not enough to change the reality on the ground. The poor also need a legal and judicial system that is accessible to them and that can make their legal entitlements practical, enforceable and meaningful. Recognizing the fundamental importance of access to justice, the operational framework of legal empowerment of the poor also focuses on the underlying incentive structures as well as the capacity of the judiciary and state institutions that are needed to make the law work for the poor. Measures to improve access to justice should focus on developing low-cost justice delivery models, taking into account the cost of legal services and legal remedies, capacity and willingness of the poor to pay for such services, congestion in the court system, the incentives of the judiciary and law enforcement agencies and the efficacy of informal and alternative dispute resolution mechanisms.

Property, labour and entrepreneurship

25. Article 17 of the Universal Declaration recognizes property rights as a fundamental human right.[6] Nonetheless, the absence or insecurity of property rights remains a central cause of poverty, especially in the poorest countries.[7] The focus on property rights, as envisaged in the Commission on Legal Empowerment of the Poor report, on the one hand seeks to expand the legal protection of assets of the poor and on the other, promote the access to property by the poor.[8]

26. For many poor people, access to land defines their existence. The lack of access to land and other natural resources is often a major source of disenfranchisement, particularly for women and other vulnerable groups. Women's ownership of property, for example, is just a minimal fraction of men's. In many cases this situation is perpetuated by laws and customary arrangements that clearly favour men. Many indigenous populations around the world also face the threat of

[5] Article 23 1 of the Universal Declaration of Human Rights provides for the right to work but also the right to the free choice of employment, which broadly includes right to self-employment, including the right to run businesses.

[6] It should be noted that no subsequent treaty elaborated on this right.

[7] Liz Alden Wily, "Land Rights Reform and Governance in Africa: How to make it work in the 21st Century", Discussion Paper (UNDP, October 2006),

[8] Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, vol. II, Working Group Reports, p. 73.

disenfranchisement because of loosely defined property rights which are often not adequately recognized by law.

27. Property rights help establish reliable ties of rights and obligations among members of a community, as well as a system of mutual recognition of rights and responsibilities beyond the local community. It is often the basis for establishing a legal identity to gain a voice, exercise voting rights, access basic services and entitlements and become a member of a community. Property rights are, often, a prerequisite for obtaining access to utilities, such as electricity, which can be a powerful means to climb out of poverty.

28. A fully functional and equitable property rights system can also ensure that ownership of assets is transferable. This, however, requires effective regulation and oversight by the State authorities to ensure that asymmetries in property ownerships do not work against the poor or create opportunities for exploitation and marginalization. Effective recognition of property rights can also facilitate access to credit, for example in the form of a loan to start a small business or a mortgage. The poor must, however, be afforded due protection of law to own, use and dispose of their property, without a presumption that their ability to use their property as collateral, and access credit, will automatically lift them out of poverty.

29. Their ability to work is the greatest asset of the poor. In this area, legal empowerment of the poor seeks to make international and national systems of labour standards and labour rights more inclusive and promote more productive and decent work for poverty eradication. The freedom of association and protection of the right to form and join trade unions, elimination of forced or compulsory labour in all its forms, just and favourable conditions of work, elimination of discrimination in access to employment, training and working conditions, equal pay for men and women for work of equal value and abolition of child labour form an important part of the internationally agreed labour standards and figure prominently in the evolving discourse on legal empowerment of the poor. Despite a long-standing commitment by all countries to these labour rights and standards, a large majority of workers remain excluded from the fundamentals of decent work and the protections that labour rights strive to provide. Decent work is also about security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

30. Most of the world's poor work in the informal economy, unable to eke out a decent living from jobs that are poorly paid. The International Labour Organization (ILO) estimates[9] that over 600 million working poor, who earn less than $1.25 a day, toil away in the informal economy, unable to lift themselves and their families out of poverty. It is important to recognize that it is not the informality but the nature of their activity that is often the cause of their poverty. In simplest terms, the link between low productivity and poverty is that if people were able to earn more from their work, poverty would decline.[10] While most international labour standards are applicable to workers in the informal economy, their enforcement by countries that lack capacity is often weak or non-existent.

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[9] ILO, *Global Employment Trends, January 2009*, table A7.

[10] Commission on Legal Empowerment of the Poor report, volume II, Working Group reports, p. 157.

31. Micro-entrepreneurs, small business owners, vendors and others who are self-employed — operating at varying degrees in the informal economy and outside formal legal regulation and protection, lacking adequate access to the advantages of formal business and financial support systems — contribute significantly to the economy in many countries. But informality is often linked to legal and political vulnerability, which can limit opportunities for economic and social development at both the individual and community levels. Rights and protection required to support self-employment, start businesses and become a micro-entrepreneur — as derived from existing rights, including political, civil, economic and social ones — are essential for the livelihoods of the poor. An effective legal system, local government institutions and services that are more open, accessible, accountable and have legitimacy, are key for a more inclusive society and empowerment of the poor.

32. There should, however, be no presumption that the poor only want to become entrepreneurs and that they are not risk averse. Micro-entrepreneurship and self-employment is often not a question of choice, but a function of a lack of other options.

III. Legal empowerment of the poor and the United Nations: national and regional experiences

33. Poverty eradication is the cardinal development objective of the United Nations. Experience at the country level suggests that a legal empowerment approach to development blends well with what the United Nations system is already doing at the operational level. Firmly premised on the normative framework and value system of the United Nations, legal empowerment of the poor is effectively complementing the poverty eradication work undertaken by the United Nations system.

34. To gain a broader understanding of what is meant by legal empowerment, as well as obtain some examples of experiences with legal empowerment at the national and regional levels, the United Nations Secretariat requested input from various funds, programmes and agencies of the United Nations system. Responses were received from the Division for the Advancement of Women, Department of Economic and Social Affairs, ILO, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Human Settlements Programme (UN-Habitat), the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Office on Drugs and Crime (UNODC). These inputs touched upon a wide range of issues, among them decent work, indigenous people's rights, land tenure, access to education, children's rights, access to justice, land titling, environmental management, housing rights and shelter, and good governance.

35. ILO promotes the legal empowerment of the poor through a variety of standards-related activities like legislative gaps analyses, awareness-raising and advocacy, advice on legislative reform and capacity-building addressed to Governments, employers' and workers' organizations as well as judges and parliamentarians. These activities are aimed at facilitating the ratification and

effective implementation of Conventions which have an impact on legal empowerment.

36. ILO plays an active role in the realization of the Millennium Development Goals, in particular Millennium Development Goal 1, on the eradication of poverty. The main tools it employs are International Labour Standards, i.e., Conventions and Recommendations adopted by the International Labour Conference. In fighting poverty and exclusion, ILO essentially relies on its Decent Work Agenda to promote employment, develop and enhance social protection (social security and labour protection) and facilitate social dialogue and uphold and realize fundamental principles and rights at work. In the area of social dialogue, ILO promotes an integrated approach to encourage good governance and advance social peace and stability based on the empowerment of national stakeholders. The very essence of social dialogue is indeed to promote consensus building and democratic involvement among the main stakeholders in the world of work.

37. In 2008, ILO published a brochure entitled *Including indigenous peoples in poverty reduction strategies: A Practice Guide based on experiences from Cambodia, Cameroon and Nepal*, indicating good practices and operational recommendations for a rights-based approach to addressing multifaceted poverty as perceived by indigenous peoples themselves. Through the Labour Dispute Resolution Project, ILO is assisting the Government of Cambodia, employers and trade unions to prevent and resolve disputes through developing new dispute resolution institutions; legal, policy and regulatory development; and capacity-building on conciliation and collective bargaining. The project is targeting the Arbitration Council and the Ministry of Labour — to improve the services they deliver to prevent and resolve disputes through conciliation and arbitration. It is also targeting workers and employers to change their labour relations, culture and practices at the workplace. A major accomplishment of the project has been the establishment of the Arbitration Council, Cambodia's only national, statutory, alternative dispute resolution body.

38. The work of FAO in land tenure, forestry and fisheries management has long focused on creating an enabling, participatory and community-based approach to development. More recently, FAO participated very actively in the deliberations of the Commission on Legal Empowerment of the Poor, in particular with regard to property rights. The FAO workplan for 2009 includes activities at the national level, the preparation of global guidelines and studies related to fisheries, forest tenure, land tenure, wildlife laws, farmers' associations and social transfers, which is closely linked to legal empowerment of the poor that seeks to promote the right to food.

39. In the field of land tenure, FAO has supported a participatory land delimitation approach as an innovative method for securing rights acquired through customary and other forms of occupation. It provides a quick and effective form of officially recording already acquired rights. The approach has been successfully used in Mozambique, where FAO has also supported the drafting and implementation of the progressive Land Law and contributed to capacity development of judges, district officials and Non-Governmental Organizations in promoting the access of the poor to land.

40. UNESCO is committed to a series of initiatives at the national and regional levels to support empowerment of the poor and the eradication of poverty. UNESCO

fosters community-based media to catalyse and amplify the community "voice" and promote public participation in people-centred development. Community media are relevant for the legal empowerment of the poor because they serve minority and marginalized groups.

41. UNESCO recognizes that children from poor households are most affected in exercising their right to education. Providing education to the poor, to the excluded and to the disadvantaged is a priority concern, as poverty is the greatest obstacle to realizing the right to education. Gender equality and empowerment of women is one of two global priorities of UNESCO for the period 2008-2013. It is seeking to empower the poor — especially women — through its efforts to promote the implementation of the Convention on the Elimination of All Forms of Discrimination against Women at the country level.

42. To support legislative reforms at the national level, UNICEF is providing assistance in the implementation of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, seeking full harmonization of national legislation with these conventions and other international instruments related to children. It has been, for example, actively involved in the reform of the constitutions of Timor-Leste, Iraq, Brazil and South Africa. In many countries, UNICEF has supported the drafting of children's codes and facilitated extensive reviews of all national laws that relate to children. In Nigeria, UNICEF partnered with the House Committee on Women and Children's Affairs in the drafting and passage of the Child Rights Act, a domestic version of the Convention on the Rights of the Child in Nigeria. In South Africa, it was involved with the adoption of two bills promoting children's rights. In its efforts to empower the poor and the marginalized, UNICEF has also been active in promoting birth registration and the elimination of child labour through legislative reform in many countries.

43. The concept of legal empowerment of the poor is embedded in the current UNDP Strategic Plan 2008-2011, which states that "effective reduction of poverty, inclusiveness and equity depend on the ability of institutions to deliver public goods and social services, effectively regulate markets in the public interest and provide legal access to economic assets and opportunities in ways that are fair and equitable".[11] The UNDP initiative on legal empowerment of the poor seeks to (a) generate strong political support, commitment, knowledge and understanding for the legal empowerment agenda with resolutions, decisions and dissemination of knowledge on the subject; (b) develop capacity of government entities at the national, provincial and local levels, to undertake necessary legal and institutional reforms and to deliver legal empowerment of the poor; and (c) engage grass-roots-level organizations to achieve a bottom-up approach in legal empowerment, support social movement and promote accountability and sustainability for pro-poor reforms.

44. A recent survey of projects implemented by UNDP country offices identified 55 ongoing projects on legal empowerment-related issues, addressing — in one way or another — access to justice, property rights, labour rights and business rights. In Indonesia, UNDP is working on a joint initiative with the National Development Planning Agency on a project on Legal Empowerment and Assistance for the Disadvantaged aimed at strengthening access to justice for poor and marginalized people through support to legal services, legal and human rights awareness and legal

[11] DP/2007/43, para. 73.

capacity development. The assessment of access to justice for the most disadvantaged populations conducted by the National Development Planning Agency and UNDP in the post-conflict provinces of West Kalimantan, Maluku, North Maluku, Central Sulawesi and Southeast Sulawesi, as well as in Nanggroe Aceh Darussalam found that the economic dimension of justice was a common concern for many of the thousands interviewed.

45. UNDP and the National Development Planning Agency, as well as other United Nations agencies, the World Bank and civil society organizations, collaborated closely to draft the country's National Strategy on Access to Justice. The national strategy recognizes access to justice for the poor as a critical means of eradicating poverty, focuses on society's most disadvantaged and marginalized groups and recommends that government policies across all sectors must seek explicitly to reach the most vulnerable persons and communities.

46. The Program for the Transition to the Rule of Law and an Inclusive Market Economy in Albania — implemented by UNDP, Institute for Liberty and Democracy, and the Government of Albania — aims to gather deeper knowledge on obstacles and costs of doing business in Albania. A diagnosis report has found that major obstacles are within the nation's existing legal framework, which contains regulatory bottlenecks, unpredictable norms, and inadequate laws that compel the poor to operate in the informal economy. This initiative will lead to policy recommendations aimed at designing institutional reform to allow greater legal protection for the poor and facilitate access to housing and other forms of assets.

47. In Liberia, Uganda and Mozambique, UNDP is partnering with the International Development Law Organization to support community land titling initiatives. The overall goal of the initiative will be to determine best practices for community land titling. Community land titling processes will also be closely investigated for signs of intra-community discrimination to determine how best to protect the land claims of the most vulnerable populations.

48. Ensuring environmental sustainability has been the fundamental objective of the United Nations Environment Programme (UNEP). Development and implementation of environmental law as a means to achieve environmental sustainability was reinforced by Agenda 21 at the 1992 United Nations Conference on Environment and Development and the Rio Declaration, as well as the Plan of Implementation adopted by the World Summit on Sustainable Development in 2002. The objective of Millennium Development Goal 7 — Ensuring environmental sustainability — requires adherence to the rule of law and a strong legal and institutional framework. UNEP therefore promotes the rule of law as it relates to the environment by supporting in particular developing countries to strengthen their legal and institutional frameworks for environmental management.

49. The UNEP environmental law programme assists developing countries and economies in transition by providing advisory services and technical assistance to develop and strengthen their environmental laws and institutions. UNEP supports the work of legal aid groups, including legal non-governmental organizations, by disseminating environmental law-related information and inviting them to environmental law programmes. Legal aid groups take up public interest litigation on behalf of the poor and marginalized in the society at no cost and assist those who cannot access courts because of fees, inability to pay for legal representation and capacity to articulate issues.

50. UNEP undertakes activities with other partners to promote the application of Rio Principle 10, of the Rio Declaration on Environment and Development which encourages Governments to reach out to the public including the poor by enhancing access to information on the environment, public participation in decision-making and access to justice in environmental matters. Enhancing the application of Rio Principle 10 includes advising Governments to provide by law opportunities for the public, including the poor, to have access to information on the environment including on harmful substances that can affect the poor and their environment. "Public participation" includes the availability of opportunities for members of the public to provide input in relation to the making of decisions, which have or are likely to have an impact on the environment, including the enactment of laws, policies and guidelines.

51. The UNEP/UNDP Poverty-Environment Facility/Poverty-Environment Initiative is currently developing a tool to identify key components in laws that can promote environmental sustainability. In empowering the poor, UNEP supports public participation in environmental decision-making and in environmental management in areas such as in community conservation programmes through participatory approaches. Community-based conservation programmes with regard to land, water, forestry, waste management, etc., when legislated at the national level, help to empower the poor and provide an opportunity to get involved and benefit from conservation programmes.

52. The UN-Habitat approach to legal empowerment of the poor is informed by the reality that the vast majority of urban poor — as many as 900 million — live in informal settlements in a condition of insecurity of tenure. Left unaddressed, this figure may reach 1.4 billion by 2020 and 2 billion by 2030. Improving the lives of at least 100 million slum-dwellers by the year 2020, Millennium Development Goal 7, Target 11, is one of the key mandates of UN-Habitat.

53. For UN-Habitat, legal empowerment begins with the recognition that many laws work against the poor. In securing housing rights and shelter for the poor, it seeks to: (a) understand the local institutions (rules and organizations) that have created socially legitimate mechanisms for regulating social behaviour; (b) build on the institutions that exist in a way that can provide them a measure of legal recognition; and (c) strengthen the institutions, where necessary, to deal with social, economic and environmental risks; for example, promoting improved hazard-resistant building practices, improved settlement layouts, securing women's land and property rights.

54. UN-Habitat is providing technical assistance to the African Union/Economic Commission for Africa/African Development Bank land policy initiative, including the land policy framework and guidelines for land reform. Many African countries are developing national land policies to, inter alia, address outdated or colonial laws to ensure more equitable access to land. It has facilitated discussions related to the implications of rapid urbanization for the continent. Through the Global Land Tool Network, funding will be provided for the development of land indicators and training packages to strengthen land administration capacity. UN-Habitat has initiated an African regional programme of capacity-building to improve transparency and address corruption in land administration.

55. In Dar-es-Salaam, United Republic of Tanzania, the UN-Habitat Slum Upgrading Facility has negotiated an agreement with local officials whereby

minimum plot sizes have been effectively reduced to make them more affordable for poor families. The community is able to purchase a piece of land under a group lease and can build individual homes more appropriate and affordable sizes. By pooling their resources into a group lease, the families can collectively meet the de jure standards set by government for buildings in that area.

56. In Surabaya, Indonesia, the Slum Upgrading Facility has negotiated with local authorities to permit slum-dwellers to meet local building codes by promoting multi-storey residences. By creating the foundations for a second-floor and having the authorities recognize an incremental building approach that will see the second half of the building completed within a set period of time, the urban poor are able to live in their neighbourhoods, but within much improved housing conditions.

57. Besides the support to the work and activities of treaty bodies and special procedures and of the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights (OHCHR) carries out programmes and activities — both at Headquarters and in the field — related to the legal empowerment of the poor, especially in areas related to access to justice and strengthening of the rule of law, a human rights approach to poverty reduction strategies and good governance and democratization.

58. In Guatemala, OHCHR organized in April 2008 an international seminar on strategic litigation and legal clinics in human rights for indigenous human rights lawyers and legal workers to sensitize civil society organizations and academia on the basics of strategic litigation and to explore the viability of strategic litigation as a method for social change in favour of human rights. Based on the outcomes of this seminar, in 2009 OHCHR Guatemala together with UNICEF and UNDP developed the project. Maya programme: for the full implementation of the indigenous peoples' rights in Guatemala.

59. In Angola,[12] OHCHR supported improved access to justice, particularly for women and people living in poor and remote areas. Legal aid centres were established in three priority provinces, and the use of alternative mechanisms for conflict resolution, such as mediation and arbitration, was integrated into the Angolan judicial system. In Burundi, the OHCHR 2008-2009 programme focused, inter alia, on strengthening of the rule of law through improved access to justice for all, particularly for the most vulnerable, and the professionalization of the judiciary and the penitentiary. In these ways, OHCHR together with the Human Rights and Justice Division of the United Nations Integrated Office in Burundi is helping to restore confidence in the judiciary.

60. The Human Rights Section of the United Nations Stabilization Mission in Haiti (MINUSTAH) has put in place a project of free legal aid in Haiti. To this end, the Human Rights Section has developed partnerships with the Bar of Mirebalais and Jacmel; the Justice Section of MINUSTAH has a similar project (called Kay Justice) in Port-au-Prince. Currently, the project of free legal assistance is operational in three Haitian cities, and it seeks to improve access to justice of those who do not have the necessary resources to pay for a lawyer.

61. The United Nations Office on Drugs and Crime (UNODC) as the custodian of United Nations standards and norms on crime prevention and criminal justice has a

[12] OHCHR Angola Office was closed in 2008.

growing programme in the area of access to justice and legal empowerment of the poor. This includes the development of tools focusing in particular on children, women and other vulnerable groups in the criminal justice system, such as the criminal justice assessment toolkit and several handbooks on penal reform which contain a strong focus on access to legal aid for all offenders and prisoners. Programmes exist in many parts of the world, including in Africa, the Middle East and Latin America.

62. In Africa, UNODC is supporting the implementation of the Revised African Union Plan of Action on Drug Control and Crime Prevention (2007-2012), which includes among its priority areas the reinforcement of the effectiveness of criminal justice systems, with a specific focus on victim assistance and witness protection.

63. Access to justice and legal aid represents an important component of a number of projects elaborated by UNODC jointly with other United Nations agencies in the framework of the Millennium Development Goals Fund. Projects with a legal aid component that are set to receive funding are being implemented in Guinea-Bissau, Mexico (in the State of Chiapas), the Plurinational State of Bolivia, Brazil and Afghanistan.

64. The UNODC Toolkit to Combat Trafficking in Persons provides an overview of ways and means of ensuring adequate legal representation for victims of trafficking to facilitate their participation in criminal proceedings against traffickers. The toolkit also advises that State-paid legal counsel should be made available to victims of trafficking to represent them during the various legal proceedings, which may range from prosecution of the trafficker to claims for compensation or restitution by the victims.

IV. Challenges, lessons learned and the way forward

65. Legal empowerment must be firmly anchored in the realities of poverty and exclusion. It requires changes in the relations between the State and the poor and their relative powers. By its very nature, legal empowerment of the poor has the potential to threaten some vested interests. There will be winners and losers, particularly as mutual payoff from legal empowerment is often not evident. In some cases, powerful economic actors may organize effectively to block reforms that could empower the poor and the disadvantaged. In others, elites may try to influence reforms to yield advantage for themselves. Persuading those who feel threatened by legal empowerment of its benefits is a challenge that must be overcome, for example, by building alliances with stakeholders and seeking ways to overcome cultural impediments to legal empowerment of the poor.

66. Success of legal empowerment initiatives and reforms on the ground will depend on many factors, including political leadership and commitment from the Government as well as other stakeholders. At the very start, legal empowerment processes must be informed by a thorough understanding of the context in which they will be undertaken. A contextual analysis should recognize which reforms are most in demand, the risks they carry and the challenges that they must overcome. Analysis of essential factors, such as domestic social and cultural structure, economic context, and the characteristics of the State, as well as the extent of legal, political and economic informality, are critical to building appreciation for the complexities involved and for avoiding many pitfalls of reform.

67. While the scale of necessary change can seem daunting, this does not mean that small steps are of no value. Starting with changes in some policy areas first can create the conditions that strengthen the voice of the poor, thereby putting them in a better position to call for additional institutional reform. It can also demonstrate to other stakeholders, including government institutions, business owners, and employers, for example, that the benefits of legal empowerment of the poor can be diffused to other parts of society.

68. Legal empowerment of the poor is both a development strategy and a development objective. While its priorities should be set by the poor and for the poor, they should also be guided by human rights principles of equality and non-discrimination, participation and accountability. Development should aim at enhancing the capacities of rights-holders to know and claim their rights. Solutions need to be tailored to the specificities of all the social groups living in poverty and the particular vulnerabilities they face. In empowering the most marginalized and excluded groups, national development strategies can benefit from the guidance of basic human rights principles in all phases of the process.

69. Basic human needs, understood as fundamental human entitlements, are not a matter of charity but of justice, and should therefore be embodied in clear, legally binding standards. This would provide a specific mandate for public officials to take action and rights claimants to hold duty bearers accountable. Countries should therefore ensure that they create an effective legal framework which recognizes human rights and provides mechanisms for their enforcement.

70. Human rights standards require the establishment of judicial or quasi-judicial mechanisms of redress. These mechanisms must be accessible and effective, and procedures must be transparent and facilitate the active and informed participation of the poor. Non-judicial means of accountability, including quasi-judicial (e.g., ombudsman, treaty bodies), political (e.g., parliamentary process) and administrative (e.g., human rights impact assessment) mechanisms, are also critical.

71. It is important to ensure that there are a sufficient number of both adequate and equitable justice mechanisms available, and that they are accessible to, and affordable for, the poor and acceptable in terms of quality. With this objective in mind, Governments may establish innovative, non-formal dispute resolution mechanisms that are of good quality, accessible to the poor and consistent with all relevant human rights standards and principles. Additional courses of action in the field of the rule of law include increasing access to justice, provisions for legal identity and birth registration, repealing or modifying laws that are biased against the poor, facilitating the creation of civil society organizations, and establishing effective and impartial policing. Further measures include making the judicial and land administration systems and public institutions more accessible by recognizing and integrating customary and informal procedures which already work for the poor. There is also the need to strengthen and make accessible accountability, appeal and oversight mechanisms in justice systems to allow the poor to bring complaints about abuse of power and authority, corruption and discrimination.

72. With respect to property rights, an agenda for legal empowerment of the poor would need to focus on promoting an inclusive and pro-poor property rights system, ensuring equitable and sustainable access to land and other natural resources, taking into account the imperatives of food security and sustainable livelihood. It will be critical that the poor enjoy the security and stability of tenure so that they do not

live in constant fear of movement, displacement and eviction. Access to and ownership of land and effective land governance, both in rural and urban areas, can mitigate the risks of tenure insecurity and facilitate poverty eradication.

73. Legal empowerment of the poor can contribute to poverty eradication through the protection and promotion of labour rights and rights to self-employment and businesses by supporting initiatives that aim at strengthening identity, voice, representation and security of contracts and also at reducing transaction costs and uncertainty for the poor, especially for those who toil in the informal economy. This will require reviewing and improving the quality of existing regulations and could be complemented by a minimum set of enforceable labour rights for workers in the informal economy. Strengthening access to opportunities, supporting inclusive social protection and promoting gender equality are actions that will also greatly benefit the poor. Effective engagement with stakeholders at the grass-roots level, business associations, and relevant government institutions is crucial for the successful implementation of such initiatives.

74. Legal empowerment of the poor should also focus on removing unnecessary barriers to formal markets and institutions, increasing opportunities for business linkages and market access, increasing benefits and protections for all working in the informal economy, strengthening the organization and representation of informal entrepreneurs, and providing equal access for micro-entrepreneurs to protection, services and utilities.

75. To enhance sustainability, effectiveness and inclusiveness of its poverty eradication efforts, the United Nations system should place greater emphasis on, taking into account existing and evolving human rights mechanisms, viewing development from an end-user perspective and to this end address in more detail the issues of rights, including labour rights, property rights, as well as other rights essential for the livelihoods of the poor.

76. Legal empowerment of the poor requires raising community-level awareness, access to legal services, including paralegal services. To this end, the international community should be encouraged to support community-based initiatives and civil society organizations working on these issues. In furthering legal empowerment of the poor, national and subnational poverty reduction strategies should include special programmes to provide free and equal access of the poor to courts, tribunals and other dispute resolution mechanisms and promote their right to a fair trial in both civil and criminal proceedings. Initiatives of legal empowerment of the poor should support social movements to strengthen the voice of the poor and marginalized people and safeguard their rights.

77. Given that the vast majority of the adult poor are women, legal empowerment efforts should also support awareness-raising and legal literacy campaigns targeting women, including rural women, on gender equality to encourage and empower them to demand justice. Provision of legal aid services to women and removal of all impediments that women may encounter in accessing justice must be mainstreamed in all development interventions. There should be concerted efforts to revise and repeal discriminatory laws and related administrative practices to ensure women's full and equal access to economic resources, including their inheritance and equal right to own property. Additional efforts are also needed to address justice for children as well.